

Environmental Protection Agency

§ 125.97

operational measures for reducing impingement mortality and/or entrainment (as applicable) of all life stages of fish and shellfish based on representative studies (*e.g.*, studies that have been conducted at cooling water intake structures located in the same waterbody type with similar biological characteristics) and, if applicable, site-specific technology prototype or pilot studies. If restoration measures will be used, you must provide a Restoration Plan that includes the elements described in paragraph (b)(5) of this section.

(C) A demonstration that the proposed and/or implemented design and construction technologies, operational measures, and/or restoration measures achieve an efficacy that is as close as practicable to the applicable performance standards of §125.94(b) without resulting in costs significantly greater than either the costs considered by the Administrator for a facility like yours in establishing the applicable performance standards, or as appropriate, the benefits of complying with the applicable performance standards at your facility;

(D) Design and engineering calculations, drawings, and estimates prepared by a qualified professional to support the elements of the Plan.

(7) *Verification Monitoring Plan.* If you comply using compliance alternatives in §125.94(a)(2), (3), (4), or (5) using design and construction technologies and/or operational measures, you must submit a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or already implemented technologies and/or operational measures. The verification study must begin once the design and construction technologies and/or operational measures are installed and continue for a period of time that is sufficient to demonstrate to the Director whether the facility is meeting the applicable performance standards in §125.94(b) or site-specific requirements developed pursuant to §125.94(a)(5). The plan must provide the following:

(i) Description of the frequency and duration of monitoring, the parameters to be monitored, and the basis for determining the parameters and the fre-

quency and duration for monitoring. The parameters selected and duration and frequency of monitoring must be consistent with any methodology for assessing success in meeting applicable performance standards in your Technology Installation and Operation Plan as required by paragraph (b)(4)(ii) of this section.

(ii) A proposal on how naturally moribund fish and shellfish that enter the cooling water intake structure would be identified and taken into account in assessing success in meeting the performance standards in §125.94(b).

(iii) A description of the information to be included in a bi-annual status report to the Director.

[69 FR 41683, July 9, 2004, as amended at 69 FR 47210, Aug. 4, 2004]

EFFECTIVE DATE NOTE: At 72 FR 37109, July 9, 2007, §125.95 was suspended.

§ 125.96 As an owner or operator of a Phase II existing facility, what monitoring must I perform?

As an owner or operator of a Phase II existing facility, you must perform monitoring, as applicable, in accordance with the Technology Installation and Operation Plan required by §125.95(b)(4)(ii), the Restoration Plan required by §125.95(b)(5), the Verification Monitoring Plan required by §125.95(b)(7), and any additional monitoring specified by the Director to demonstrate compliance with the applicable requirements of §125.94.

EFFECTIVE DATE NOTE: At 72 FR 37109, July 9, 2007, §125.96 was suspended.

§ 125.97 As an owner or operator of a Phase II existing facility, what records must I keep and what information must I report?

As an owner or operator of a Phase II existing facility you are required to keep records and report information and data to the Director as follows:

(a) You must keep records of all the data used to complete the permit application and show compliance with the requirements of §125.94, any supplemental information developed under §125.95, and any compliance monitoring data submitted under §125.96, for a period of at least three (3) years from date of permit issuance. The Director

may require that these records be kept for a longer period.

(b) You must submit a status report to the Director for review every two years that includes appropriate monitoring data and other information as specified by the Director in accordance with § 125.98(b)(5).

EFFECTIVE DATE NOTE: At 72 FR 37109, July 9, 2007, § 125.97 was suspended.

§ 125.98 As the Director, what must I do to comply with the requirements of this subpart?

(a) *Permit application.* As the Director, you must review materials submitted by the applicant under 40 CFR 122.21(r) and § 125.95 before each permit renewal or reissuance.

(1) You must review and comment on the Proposal for Information Collection submitted by the facility in accordance with § 125.95(a)(1). You are encouraged to provide comments expeditiously so that the permit applicant can make responsive modifications to its information gathering activities. If a facility submits a request in accordance with § 125.95(a)(2)(ii) for an alternate schedule for submitting the information required in § 125.95, you must approve a schedule that is as expeditious as practicable, but does not extend beyond January 7, 2008. If a facility submits a request in accordance with § 125.95(a)(3) to reduce the information about their cooling water intake structures and the source waterbody required to be submitted in their permit application (other than with the first permit application after September 7, 2004), you must approve the request within 60 days if conditions at the facility and in the waterbody remain substantially unchanged since the previous application.

(2) After receiving the permit application from the owner or operator of a Phase II existing facility, you must determine which of the requirements specified in § 125.94 apply to the facility. In addition, you must review materials to determine compliance with the applicable requirements.

(3) At each permit renewal, you must review the application materials and monitoring data to determine whether new or revised requirements for design and construction technologies, oper-

ational measures, or restoration measures should be included in the permit to meet the applicable performance standards in § 125.94(b) or alternative site-specific requirements established pursuant to § 125.94(a)(5).

(b) *Permitting requirements.* Section 316(b) requirements are implemented for a facility through an NPDES permit. As the Director, you must consider the information submitted by the Phase II existing facility in its permit application, and determine the appropriate requirements and conditions to include in the permit based on the compliance alternatives in § 125.94(a). The following requirements must be included in each permit:

(1) *Cooling water intake structure requirements.* The permit conditions must include the requirements that implement the applicable provisions of § 125.94. You must evaluate the performance of the design and construction technologies, operational measures, and/or restoration measures proposed and implemented by the facility and require additional or different design and construction technologies, operational measure, and/or restoration measures, and/or improved operation and maintenance of existing technologies and measures, if needed to meet the applicable performance standards, restoration requirements, or alternative site-specific requirements. In determining compliance with the performance standards for facilities proposing to increase withdrawals of cooling water from a lake (other than a Great Lake) or a reservoir in § 125.94(b)(3), you must consider anthropogenic factors (those not considered “natural”) unrelated to the Phase II existing facility’s cooling water intake structures that can influence the occurrence and location of a thermocline. These include source water inflows, other water withdrawals, managed water uses, wastewater discharges, and flow/level management practices (*e.g.*, some reservoirs release water from deeper bottom layers). As the Director, you must coordinate with appropriate Federal, State, or Tribal fish and wildlife management agencies to determine if any disruption of the natural thermal stratification resulting from the